

RESOLUTION NO. 2024-xx

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION AND DENY PLANNING APPLICATION 22-22 FOR A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 1858 NEWPORT BOULEVARD (EVLV HERBAL)**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, Planning Application 22-22 was filed by Mark Adams representing Evlv Herbal, the authorized agent for the property owner, 1858 Newport Boulevard Trust, requesting approval of the following:

A Conditional Use Permit to operate a storefront retail and cannabis delivery business within an existing 2,280-square-foot commercial building located at 1858 Newport Boulevard. The business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and through delivery, subject to conditions of approval and other City and State requirements;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on December 11, 2023 with all persons having the opportunity to speak for and against the proposal, and the project was denied by the Planning Commission on a 4-3 vote;

WHEREAS, on December 15, 2023 Mayor Stephens filed a request for the City Council review of the Planning Commission's decision;

WHEREAS, a duly noticed public hearing was held by the City Council on February 6, 2024 with all persons having the opportunity to speak for and against the appeal;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 (Class 1), for Existing Facilities, and Section 15270(a) for projects that a public agency rejects or disapproves.

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

WHEREAS, the City Council has considered all public comments which have been received either in writing or at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA  
HEREBY RESOLVES as follows:

BE IT RESOLVED that based on the evidence in the record and the findings  
contained in Exhibit A, the City Council hereby denies Planning Application 22-22 with  
respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause,  
phrase or portion of this resolution, or the document in the record in support of this  
resolution, are for any reason held to be invalid or unconstitutional by a decision of any  
court of competent jurisdiction, such decision shall not affect the validity of the remaining  
provisions.

**PASSED AND ADOPTED this 20th day of February 2024.**

\_\_\_\_\_  
John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

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Brenda Green, City Clerk

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Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF COSTA MESA )

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 2024-XX and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 20th day of February 2024, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 21<sup>st</sup> day of February 2024.

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Brenda Green, City Clerk

## EXHIBIT A

### FINDINGS

- A. Pursuant to CMMC Section 13-29(g), when granting an application for a conditional use permit, the reviewing authority shall find that the evidence presented in the administrative record substantially meets certain required findings. The Applicant failed to meet the burden to demonstrate that the proposed project would comply with all of the requirements of Section 13-29(g)(2) and therefore the Planning Commission was unable to make the required findings to approve the proposed use for each and every reason set forth herein below:

**Finding:** *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.*

**Facts in Support of Findings for Denial:** The proposed use is found to be incompatible with the adjacent land uses and general area, and be materially detrimental to other properties within the area in that the project proposes the operation of a cannabis retail storefront to be located adjacent to a cannabis storefront that is currently operating at 1854 Newport Boulevard, and adjacent to another cannabis storefront that was recently approved, but not yet operating, at 1860 Newport Boulevard. Based on the concentration of the same type of commercial uses to be located within close proximity, the proposed use would conflict with the necessary mix and balance of commercial goods and services in consideration of the needs of the business community, as stipulated by the General Plan (Policy LU-1.1). Additionally, based on the proposed concentration of similar uses, the proposed use would not “encourage a mix of land uses that maintain the City’s long-term fiscal health” (Policy LU-6.1), and thereby would be fiscally materially detrimental to the adjacent commercial district.

**Finding:** *Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.*

**Facts in Support of Finding for Denial:** The proposed cannabis retail storefront would be materially detrimental to the general welfare of the public and otherwise injurious to property or improvements within the immediate neighborhood in that based on the proposed concentration of the same commercial uses to be located within the same general area, the proposed cannabis retail storefront would result in an imbalanced and non-resilient local commercial district.

**Finding:** *Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property.*

**Facts in Support of Finding for Denial:** The General Plan Policy LU-1.1 stipulates that development should provide for a mix and balance of commercial goods and services in consideration of the needs of the business community. The proposed cannabis retail storefront would result in a use, density and intensity that is not in conformance with General Plan Policy LU-1.1 in that the project proposes the operation of a cannabis retail storefront to be located adjacent to a cannabis storefront that is currently operating at 1854 Newport Boulevard, and adjacent to another cannabis storefront that was recently approved at 1860 Newport Boulevard. Based on the concentration of the same type of commercial uses to be located within close proximity, the proposed use would not contribute to the necessary mix and balance of commercial goods and services in consideration of the needs of the business community and be fiscally materially detrimental to the adjacent properties by reducing local commercial diversity. Relying heavily on a specific land use will result in problematic fiscal health for the commercial district.